

The NASD also proposes to adopt a new rule relating to give up agreements and provisions designed to clarify the reporting of riskless principal transactions.¹⁷ Specifically, the NASD proposes to adopt NASD Rule 4632C(g), which states that a member may agree to allow an NASD/NSX TRF participant to report trades on its behalf, provided that both parties have completed an agreement to that effect (a “give up agreement”) and submitted the agreement to the NASD/NSX TRF. The NASD also proposes to adopt NASD Rule 4632C(d)(3)(B), which sets forth the procedures for reporting riskless principal transactions. Specifically, NASD Rule 4632C(d)(3)(B) provides that when the media leg of a riskless principal transaction is reported to the NASD/NSX TRF, the second, non-media leg also must be reported to the NASD/NSX TRF. When the media leg of the riskless principal transaction has been reported previously by an exchange, a member would be permitted, but not required to report the second, non-media leg to the NASD/NSX TRF. To avoid double reporting of the same transaction, NASD Rule 4632C(e)(6) provides that transactions reported on or through an exchange shall not be reported to the NASD/NSX TRF for purposes of publication.

In Amendment No. 1, NASD proposes additional changes to its rules to reflect that the NASD/NSX will also accept trade reports in non-Nasdaq exchange-listed securities. Specifically, NASD proposes to amend (e) of Rule 4632C to prohibit members from reporting the following transactions: (1) the acquisition of securities by a member as principal in

trade matching, trade acceptance, or aggregate volume matching. Similarly, because the NASD/NSX TRF will not be able to support trade reporting for certain transactions on its first day of operation, NASD Rules 4632C(a)(2) and (a)(7) indicate that certain types of transactions may not be reported through the NASD/NSX TRF and must be reported to the NASD via an alternative electronic mechanism.

¹⁷ The NASD has proposed similar provisions for the NASD/Nasdaq TRF. See Pending NASD/Nasdaq TRF Proposal, supra note 7.

